

**NO. 16-70488**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**CPS SECURITY (USA), INC. *et. al.*  
Defendants and Appellants**

**v.**

**National Labor Relations Board  
Plaintiff-Appellee**

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**Appeal from the National Relations Board December 24, 2015 Order in  
28-CA-072150; 28-CA-075432; 28-CA-075450**

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**MOTION FOR 30-DAY EXTENSION OF TIME TO  
FILE APPELLANTS' OPENING BRIEF**

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**Attorney for Petitioners-Cross Respondents,  
CPS Security (USA) Inc., *et al.***

**MOTION FOR EXTENSION OF TIME**

Petitioners-Cross Respondents CPS Security (USA), Inc., CPS Security Solutions, Inc., CPS Construction Security Plus, Inc. and EP Security Services, Inc. (collectively “Petitioners” or “CPS”) respectfully move for a 30-day extension to file their Opening Brief in this matter pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 31-2.2(b). As set forth below, good cause exists for the requested extension. CPS’s counsel has worked diligently to meet its deadline to file the Opening Brief. However, two days ago a divided panel of this court issued a published decision in the case of *Morris v. Ernst & Young, LLP*, No. 13-16599, 2016 WL 4433080 (9th Cir. Aug. 22, 2016). Additional time is needed for counsel to analyze the *Morris* opinions and to incorporate that analysis into the current draft of CPS’s Opening Brief.

Barring unforeseen circumstances, counsel for CPS believe that these revisions can be completed so that the Opening Brief can be filed within the time requested. This motion is accompanied by the attached Declaration of Howard M. Knee, one of CPS’s attorneys.

On February 22, 2016, CPS filed a Petition for Review in this matter. This court issued a briefing schedule, setting the due date for filing CPS’s Opening Brief on or before August 16, 2016. On August 8, 2016, CPS submitted a streamlined request for an extension. The court granted this request, setting the new due date for filing CPS’s Opening Brief on or before August 31, 2016. The parties have not requested any other extensions.

CPS’s counsel has worked diligently to meet the extended, streamlined deadline for filing its Opening Brief, and was prepared to file it on or before August 31, 2016 until new legal authority was published on Monday, August 22, 2016, which added to a circuit split over the issues contested in this matter.

This court's recent opinions in *Morris* present CPS's counsel with a need for a full opportunity to review the decision and revise its Opening Brief to address the holdings of the decision. In the instant appeal, the primary issue to be determined is whether the arbitration agreement signed by CPS's Nevada employees violates federal labor law because it contains an election to have employment disputes adjudicated through individual arbitration rather than class actions. Until *Morris*, this court had not addressed whether such class action waivers violate the National Labor Relations Act ("NLRA"). In a 2-to-1 decision, a panel of this court held that an employer violates the NLRA by *requiring* employees to sign an agreement precluding them from bringing, in any forum, a concerted legal claim regarding wages, hours, and terms or conditions of employment. *Morris, supra*, No. 13-16599, 2016 WL 4433080, p. 4. Although CPS maintains that its employees voluntarily signed its class action waivers and employees could opt out, CPS needs additional time to revise its Opening Brief to discuss the freshly-minted *Morris* opinions.

CPS may be significantly prejudiced if this motion for extension is denied, as counsel will not have adequate opportunity to address the current authority in an Opening Brief that fully advances CPS's interests. CPS's counsel communicated with counsel for the NLRB concerning this request for extension. On August 24, 2016, counsel for the NLRB advised CPS's counsel that the NLRB does not oppose a 30-day extension.

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For the reasons stated above, and pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 31-2.2(b), CPS requests an additional 30-day extension through September 30, 2016 to file its Opening Brief.

August 24, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Ludwig", is written over a horizontal line.

Michael L. Ludwig

Attorney for Petitioners-Cross Respondents

## DECLARATION OF HOWARD M. KNEE

I, Howard M. Knee, declare:

1. I am an attorney at law duly admitted to practice before this Court, and am a partner in the law firm of Blank Rome LLP, attorneys for Petitioners-Cross Respondents CPS Security (USA), Inc., CPS Security Solutions, Inc., CPS Construction Security Plus, Inc. and EP Security Services, Inc. (“CPS”) in this matter. Jim D. Newman, CPS’s General Counsel, is also representing CPS. On February 22, 2016, CPS filed a Petition for Review in this matter. This Court issued a briefing schedule, setting the due date for filing CPS’s Opening Brief on or before August 16, 2016.
2. On August 8, 2016, CPS submitted a streamlined request for an extension. The Court granted this request, setting the new due date for filing CPS’s Opening Brief on or before August 31, 2016.
3. The parties have not requested any other extensions.
4. With the assistance of Jim D. Newman, I have worked diligently to meet CPS’s August 31, 2016 deadline for filing the Opening Brief. We are unable to meet the deadline given the Court’s August 22, 2016 decision in *Morris v. Ernst & Young, LLP*, No. 13-16599, 2016 WL 4433080 (9th Cir. Aug. 22, 2016). The new authority adds to a circuit split over the issues contested in the present matter. We require additional time to review the court’s recent opinions and to incorporate our analysis into CPS’s arguments in this case. As a result, CPS now requests a 30-day extension through September 30, 2016 to file its Opening Brief. CPS may be significantly prejudiced if this motion is denied, as we would not have adequate opportunity to address the current case law in an Opening Brief

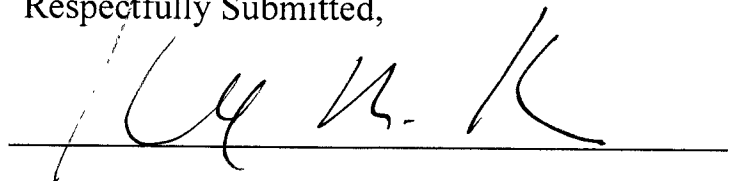
that fully advances CPS's interests. I believe CPS will be able to file its Opening Brief on or before this extended due date.

5. As a result of the foregoing reason, there is substantial need for an additional extension of time for filing CPS's Opening Brief.
6. This motion is made in good faith for the reasons stated herein, and not for any other purpose. I am not aware of any prejudice that will result to any party from the granting of this motion.
7. CPS contacted Barbara Sheehy, counsel for the NLRB, concerning this request for extension on August 23, 2016 via email. On August 24, 2016, Ms. Sheehy advised CPS via email that the NLRB does not oppose a 30-day extension.
8. No court reporter is in default with regard to any designated transcripts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of August, 2016.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "H. M. Knee", is written over a horizontal line.

Howard M. Knee

Attorney for Petitioners-Cross Respondents